

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
International Business Reply Service
Competitive Contract 1 (MC2009-14)
Negotiated Service Agreement

Docket No. CP2013-28

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE OF FILING AN ADDITIONAL
INTERNATIONAL BUSINESS REPLY SERVICE CONTRACT 1
NEGOTIATED SERVICE AGREEMENT

(December 26, 2012)

The Public Representative hereby provides comments pursuant to Order No. 1587.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Notice establishing a contingency price arrangement pursuant to a provision in an expired International Business Reply Service (IBRS) competitive contract.² The contingency price arrangement, consisting of new prices applicable to merchandise and other articles returned in postage-prepaid IBRS packaging from overseas locations to a U.S.-based entity, are to be effective January 1, 2013, and remain in effect indefinitely. *Id.* at 2; Attachment 1 at 1.

Contingency prices represent the Postal Service's response to the particular nature of IBRS as a return service that is permitted by a surviving provision of a contract that expired on March 31, 2008. Notice at 2. A successor contract between the Postal Service and the contracting partner has not been executed. *Id.* Nevertheless, overseas customers have the option of indefinitely returning used or defective articles to the

¹ PRC Order No. 1587, Notice and Order Concerning International Business Reply Service Competitive Contract 1 Product, December 18, 2012.

² Notice of United States Postal Service of Prices under Functionally Equivalent International Business Reply Service Competitive Contract 1 Negotiated Service Agreement, December 14, 2012 (Notice).

contracting partner in the U.S. using the postage-prepaid IBRS packaging. Given this contingency, over which the contracting partner has no control, the Postal Service establishes prices to cover its costs of accepting and delivering such returned items pursuant to the surviving provision of the expired contract. *Id.*

Prices and classifications not “of general applicability” for IBRS contracts were previously established by Governors’ Decision No. 08-24.³ In Order No. 178, the Commission added the International Businesses Reply Service Competitive Contract 1 product to the competitive product list.⁴ Since expiration of the contract, the Postal Service has subsequently filed three notices of changes in contingency prices pursuant to the surviving provision of the expired contract, covering calendar year (CY) 2010, CY 2011, and CY 2012, respectively.⁵ The Commission approved the addition of these contingency price arrangements to the International Businesses Reply Service Competitive Contract 1 product.⁶

In this proceeding, the Postal Service requests that the Commission include the proposed indefinite contingency price arrangement within the IBRS Competitive Contract 1 product based on its functional equivalence to the IBRS contracts in Docket Nos. CP2009-20 and CP2009-22. *Id.* at 6.

³ See Request of the United States Postal Service to Add International Business Reply Service Contracts to the Competitive Products List, and Notice of Filing (Under Seal) Contract and Enabling Governors’ Decision, Docket Nos. MC2009-14 and CP2009-20, December 24, 2008.

⁴ See PRC Order No. 178, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, Docket Nos. MC2009-14 and CP2009-20, February 5, 2009.

⁵ See Notice of United States Postal Service of Change in Prices under Functionally Equivalent International Business Reply Service Competitive Contract 1 Negotiated Service Agreement, Docket No. CP2010-17, December 18, 2009; see also Notice of United States Postal Service of Change in Prices under Functionally Equivalent International Business Reply Service Competitive Contract 1 Negotiated Service Agreement, Docket No. CP2011-43, December 14, 2010; and Notice of United States Postal Service of Prices Under Functionally Equivalent International Business Reply Service Competitive Contract 1 Negotiated Service Agreement, Docket No. CP2012-5, December 15, 2011.

⁶ See PRC Order No. 377, Order Concerning Change in Prices for International Business Reply Service Contract 1 Negotiated Service Agreement, Docket No. CP2010-17, December 30, 2009; see also PRC Order No. 629, Order Concerning Contingency Prices for International Business Reply Service Competitive Contract 1, Docket No. CP2011-43, December 29, 2010; and PRC Order No. 1089, Order Including Contingency Price arrangement Within International Business Reply Service Competitive Contract 1 Product, Docket No. CP2012-5, December 30, 2012.

COMMENTS

The Public Representative has reviewed the contingency prices and supporting financial model filed under seal that accompanies the Postal Service's Notice. Based upon that review, the Public Representative concludes that in this unique case, the proposed indefinite contingency price arrangement may be treated as functionally equivalent to the previously approved arrangements. In addition, it appears the contingency prices should generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633.

Functional Equivalence. The Postal Service asserts that the "contingency arrangement is essentially identical to those envisioned in the contracts the Commission included in the IBRS Competitive Contract 1 product in Docket Nos. CP2009-20 and CP2009-22, albeit with minor procedural variations due to different negotiation outcomes." Notice at 5-6. The Postal Service also maintains that "the nature of the IBRS service provided in all three contracts is essentially the same, and the instant IBRS contingency arrangement bears similar market characteristics to the two other IBRS Competitive Contract 1 agreements." *Id.* at 6.

Nevertheless, the Postal Service identifies an important difference compared to the previous contingency arrangements. Unlike those previous arrangements, the new contingency prices that are the subject of this proceeding would remain in effect indefinitely unless modified by the Postal Service. *Id.* at 5.

The open-ended term of the instant contingency price arrangement represents a departure from contingency price arrangements previously included in the IBRS Competitive Contract 1 product. Such an open-ended term potentially raises questions as to the functional equivalency of the instant contingency price arrangement to the previous arrangements. That said, the instant contingency price arrangement, and the IBRS Competitive Contract 1 product generally, operates as a unique response to an expired contract for a very specialized postal service that is available for a relatively few remaining postage-prepaid packages which will ultimately disappear. For these reasons, it is not necessary to reach the question of whether an open-ended contract

expiration term would be, in normal circumstances, functionally equivalent to a contract with an expiration date. The Public Representative therefore considers the instant contingency price arrangement to be functionally equivalent to those arrangements previously approved by the Commission in Docket Nos. CP2009-20 and CP2009-22.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model filed under seal with the Postal Service's Notice, it appears that for IBRS returns in CY 2013, the new contingency prices to should generate sufficient revenues to cover costs and thereby satisfy the requirements of section 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

James F. Callow
Public Representative

901 New York Ave. NW
Washington, DC 20268-0001
202-789-6839
callowjf@prc.gov